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In the Supreme Court of the United States

OCTOBER TERM, 1962

WILLOW TAYLOR DARBY INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND ORVILLE L. FREEMAN, SECRETARY OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1124

WILLOW FARMS DAIRY, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND ORVILLE L. FREEMAN, SECRETARY OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland (R. 205)[1] is reported at 206 F. Supp. 239. The opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 14) is not yet reported. The opinion of the court of appeals denying petitioners' motion for rehearing (Pet. App. 33) is not yet reported.

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[1] "R." refers to the separately bound printed appendix to the government's brief filed in the court of appeals, nine copies of which petitioner has filed in this Court. "Pet. App." references are to the appendix to the petition for a writ of certiorari.

JURISDICTION

The judgment of the court of appeals was entered on March 11, 1963 (Pet. App. 14). A timely petition for rehearing was denied on April 26, 1963 (Pet. App. 37). The petition for a writ of certiorari was filed on May 22, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, prior to the issuance of Federal Milk Marketing Order No. 16, the Secretary of Agriculture ascertained the parity price of milk in the manner prescribed by the Agricultural Marketing Agreement Act of 1937, as amended.

2. Whether the referendum to obtain producer approval of the marketing order was properly conducted.

3. Whether the Secretary was acting within his discretion in including the counties surrounding the City of Baltimore within the ambit of the marketing order.

STATUTE INVOLVED

The pertinent sections of the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 *et seq.*, are set forth in the Appendix, *infra*, pp. 19–33.

STATEMENT

1. *Introduction*

This litigation involves two actions under the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601 *et seq.* One is an enforcement action brought by the United States under 7 U.S.C. 608a(6) to obtain the compliance of petitioner Willow Farms with Milk

Marketing Order No. 16 (originally numbered 127) issued by the Secretary of Agriculture. The other was brought by that petitioner (and 34 of the dairy farmers who supply it with milk) against the Secretary, seeking judicial review of Milk Marketing Order No. 16 and challenging its validity. Willow Farms and the intervening farmers now seek review by this Court of the Fourth Circuit's decision upholding the marketing order and requiring compliance.

2. *The Marketing Order*

Under the Agricultural Marketing Agreement Act the Secretary of Agriculture is authorized, under certain conditions, to establish "marketing areas" and to regulate within those areas the marketing of certain agricultural commodities, including milk. In this case, after a public hearing, the Secretary promulgated Milk Marketing Order No. 16 on December 31, 1959 (R. 50–81). Order No. 16 governs the marketing of milk in a region centered on Baltimore, Maryland, and encompasses that city, together with surrounding Maryland counties on the western and eastern shores of Chesapeake Bay.

The provisions of this marketing order (in common with approximately 70 similar Federal Marketing Orders) operate directly upon the companies engaged in the business of selling and distributing milk and its products in the area. Under the Order, these regulated milk companies[2] were each required to pay

[2] The Agricultural Marketing Agreement Act governs the regulation by the Secretary of Agriculture of many diverse agricultural commodities. The Act refers to those who raise

not less than certain uniform minimum prices established by the Secretary for milk which they purchased from their dairy farmer suppliers. The applicable minimum price depended upon the use made by the milk company of the milk it purchased,[3] milk to be used in fluid form (Class I) being priced higher than milk for manufacturing into such items as butter and cheese (Class II). Milk that must be disposed of for manufacturing purposes is known as "surplus" and has traditionally commanded lower prices on the open market.[4]

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these commodities as "producers," and to those who distribute and market them as "handlers". As this case involves only the regulation of milk marketing, we shall refer here to the principals by their common descriptions, "farmers" and "milk companies."

[3] The Act also permits additional price differentials based upon such factors as the butterfat content of the milk, transportation factors, etc., 7 U.S.C. 608c(5)(A). None of these differentials are involved in these proceedings, however.

[4] In order to insure that it will at all times be able to meet the fluctuating daily consumer demand for fluid milk, the industry must carry a "surplus" of 20% over the average demand; however, because the herds naturally produce significantly more milk in the spring, to meet the needs in November necessitates more than a 50% surplus in June. "Surplus" milk is not wasted: it is manufactured into butter, cheese, powdered milk and similar items. However, these manufactured items are in direct competition with similar products made across the nation, often in areas with lower production costs and from milk of lower quality. Consequently, "surplus" milk can be sold only at a greatly reduced price. The cut-throat competition among the farmers for the more profitable fluid milk outlets led to violence and business practices which jeopardized the vital fluid milk supply. The Agricultural Marketing Agreement Act was enacted to control the situation. This Court has in many cases considered

The marketing order did not require the milk companies to pay those minimum class prices directly to the dairy farmers. Rather, as authorized by Section 8c(5) of the Act,[7] it contained provisions to insure that the rate of return to each dairy farmer for his milk was the same, regardless of the use made of it by the company to which he delivered the milk. The order accomplished this objective by means of a market-wide "pool." Monthly, each regulated milk company reports the value of its total sales of milk in each price class to a Market Administrator. That official totals the value of all the reported sales and divides that sum by the quantity of milk sold. The result is, of course, a weighted average between the Class I and the lower Class II price. This monthly average price, known as the uniform or "blend" price, is the minimum price required to be paid by the regulated milk companies to each farmer for his milk, regardless of the use to which the company has put it.

In recognition of the fact that all companies can be expected to have either a higher or a lower fluid milk utilization rate than the market-wide average (which the blend price reflects) and thus will be obligated (under the established class prices) for either more or less money than the amount paid to their farmers as the uniform blend price, the order established a

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the problems of the milk industry outlined above. See, *Nebbia* v. *New York*, 291 U.S. 502, 515–522; *United States* v. *Rock Royal Co-op.*, 307 U.S. 533, 548–550; *H. P. Hood & Sons* v. *United States*, 307 U.S. 588; *Stark* v. *Wickard*, 321 U.S. 288; *United States* v. *Ruzicka*, 329 U.S. 287; *H. P. Hood & Sons* v. *Du Mond*, 336 U.S. 525.

[7] 7 U.S.C. 608c(5).

clearing house operation known as the producer settlement fund. Each company either pays into, or draws from, the fund the difference between the uniform blend price to its farmers and the value of its milk computed at the class prices. The operation of the fund has no effect upon the class prices.

Before the Upper Chesapeake Bay Marketing Order could be placed into operation, the Act required the Secretary of Agriculture to obtain the agreement of the milk companies to be regulated thereby, 7 U.S.C. 608c(8), or, failing that agreement, the approval of "at least two thirds of the producers * * * who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order * * *." 7 U.S.C. 608c(9)(B)(i).

The milk companies declined to give their consent to the proposed order. The Secretary thereupon submitted the proposed marketing order for the farmers' approval by means of a referendum, a method expressly permitted by Section 8c(19) of the Act.* The Secretary permitted every farmer whose milk would be subject to the minimum price and "pooling" provisions under the proposed order to vote in the referendum (R. 191–193). The result was 1,663 votes in favor of the proposed Order and 192 against (R. 192).

Accordingly, on December 31, 1959, the Secretary officially promulgated the order as Milk Marketing Order No. 127, (later renumbered 16), 24 F.R. 11071 *et seq.* (R. 50–81). The Order became effective for

*7 U.S.C. 608c(19).

reporting purposes on January 1, 1960 and for purposes of minimum price payments on February 1, 1960.

3. *The Instant Cases.*

Petitioner Willow Farms is a company engaged almost exclusively in the processing and sale of milk in fluid form and does the major portion of its business in Baltimore County and Carroll County, Maryland (R. 211). The other petitioners, who intervened in the district court, are 37 dairy farmers who supply it with milk. Baltimore County surrounds to landward the City of Baltimore, which is on Chesapeake Bay. Carroll County is adjacent and to the west of Baltimore County. Both these counties lie within the Upper Chesapeake Bay Marketing Area (R. 53), and Willow Farms Dairy is concededly a fully regulated milk company under the terms of Marketing Order No. 16 (R. 210).

From the Marketing Order's inception, Willow Farms failed to comply with its minimum price provisions, paying substantially less than the established Class I price for the milk which it used for fluid purposes. Accordingly, the United States, pursuant to 7 U.S.C. 608a(6), filed suit in the federal district court for Maryland to enforce petitioner's compliance with the marketing order (R. 85). In this enforcement action, Willow Farms Dairy, Inc., consented to the entry of a preliminary injunction against it (R. 94). Under that preliminary injunction, Willow Farms paid the amounts it owed the producer settlement fund into the registry of the district court.

In the interim, petitioner challenged the validity of the Milk Marketing Order in an administrative proceeding before the Secretary of Agriculture pursuant to 7 U.S.C. 608c(15)(A).[7] From the Secretary's decision rejecting its challenge (R. 149), Willow Farms sought judicial review in the district court, as provided in 7 U.S.C. 608c(15)(B).

On June 13, 1962, the district court handed down its opinion, *Willow Farms Dairy, Inc.* v. *Freeman*, 206 F. Supp. 239 (R. 205), and on June 26, 1962, entered its final judgment (R. 237–238), which held Milk Marketing Order No. 16 invalid.[8] The district court also released Willow Farms (and others) from their obligation to meet the minimum price requirements of the Order which it had agreed to pay into court in the enforcement action. The district court rested its decision on three grounds: (1) that under 7 U.S.C. 608c(18), and prior to setting minimum prices for milk, the Secretary of Agriculture had to "find" the parity price of milk upon evidence obtained at a hearing and make certain adjustments thereto, which he had failed to do; (2) that the Secretary had unduly restricted the class of dairy farmers entitled to vote in the referendum to determine whether to place the

[7] Petitioner had initially made an unsuccessful attempt to secure judicial review of the Marketing Order without exhausting its administrative remedies. *Willow Farms Dairy, Inc.* v. *Benson*, 181 F. Supp. 802 (D. Md.), affirmed, 276 F. 2d 856 (C.A. 4).

[8] Similar actions were brought by other milk companies, which, while not formally consolidated, were disposed of by the district court in a single opinion (R. 205).

marketing order into effect; and (3) that the order was discriminatory because it included within the same marketing area both the City of Baltimore and surrounding Maryland counties.

On March 11, 1963, the court of appeals reversed the decision of the district court. That court considered in detail, and rejected, each of the grounds assigned by the district court as a basis for holding the the marketing order invalid. It concluded that the Secretary had fully complied with the statutory requirements and ordered the marketing order enforced (Pet. App. 14).

On April 26, 1962, the court of appeals denied Willow Farms' motion for rehearing either by the sitting panel or *en banc* (Pet. App. 32, 33). It stayed, however, the effect of its mandate of enforcement pending consideration by this Court of Willow Farms' petition for certiorari.

ARGUMENT

This Court has previously held the Agricultural Marketing Agreement Act of 1937 to be constitutional and has approved, as authorized by that Act, milk marketing orders corresponding in all essentials to the one here questioned. *United States* v. *Rock Royal Co-op.*, 307 U.S. 533, and *H. P. Hood & Sons* v. *United States*, 307 U.S. 588. The court below determined that the marketing order under challenge was supported by substantial evidence in the administrative record and that its issuance complied with all statutory requirements. The decision is plainly cor-

rect. There is accordingly no occasion for further review by this Court.

1. Before the Secretary of Agriculture may issue a marketing order which fixes a minimum price to be paid to dairy farmers for milk or its products, Section 8c(18) of the Act[9] requires that he "shall ascertain the parity prices of such commodities." Petitioners claim (Pet. pp. 7–8) that this means that the Secretary must *find* that parity price upon evidence adduced at a hearing and that the parity price so "found" must be related to some *local* market.

This contention overlooks the provisions of the Act which specify the manner in which the Secretary shall compute parity prices. Section 2(1) of the Act[10] declares it to be the policy of Congress:

> Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish, as the prices to farmers, *parity prices as defined by section 301(a)(1) of* [the Act]. [Emphasis supplied.]

Section 301(a),[11] *infra*, pp. 31–33, in turn contains a complex formula required to be used in all parity price computations. Subpart D of that section specifically provides that:

> The prices and indices provided for herein, and the data used in computing them, shall be

[9] 7 U.S.C. 608c(18).

[10] 7 U.S.C. 602(1), as amended, 62 Stat. 1257–58.

[11] 7 U.S.C. 1301(a).

> determined by the Secretary, whose determination shall be final.

And Section 301(c)[12] adds that:

> The latest available statistics of the Federal Government shall be used by the Secretary in making the determinations required to be made by the Secretary under this chapter.

It is a matter of record in this case that the Secretary computed the parity price for milk from the latest federal statistics according to the statutory formula, published and distributed those computations (along with parity figures for other commodities) monthly in the official department publication *Agricultural Prices*,[13] and reviewed those figures before he set about issuing the marketing order here challenged (R. 176–186). Moreover, nowhere in that formula is there even a suggestion that parity is anything but a national price, and, as the court of appeals pointed out, the legislative history of the parity price concept refers specifically to a national parity price (Pet. App. 20). Thus, the Secretary followed the statutory mandate. See also *Beatrice Creamery Co.* v. *Anderson*, 75 F. Supp. 363, 368 (D. Kan.).

Moreover, the Secretary did not, as petitioners suggest (Pet. 13), "disregard" the parity price which he ascertained. Rather, as the result of evidence taken at a public hearing (at which petitioners were represented), he found that the parity prices were unreasonable in view of the factors which section

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[12] 7 U.S.C. 1301(c).

[13] 7 C.F.R. § 5.1.

8c(18) of the Act[14] directed him to consider (R. 48). The Secretary went on to set minimum prices for milk reflecting the conditions he found, all of which he fully explained in his decision (R. 35–40).

This Court has already held that, under Section 8c(18) of the Act,[15] the Secretary may fix minimum prices without restriction to the parity prices if he finds that such prices are unreasonable in the marketing area under consideration. *United States* v. *Rock Royal Co-op.*, 307 U.S. 533, 546. Accord, *United States* v. *Turner Dairy Co.*, 166 F. 2d 1 (C.A. 7), certiorari denied, 335 U.S. 813. Petitioners present no challenge here, nor did they below, to the reasonableness of the prices set by the Secretary. Nor did they allege that those prices are unsupported by substantial evidence in the record, as indeed they cannot. We submit, therefore, that on this point petitioners raise no new issues meriting consideration by this Court. Cf. *United States* v. *Turner Dairy Co., supra.*

2. Petitioners renew their claim below that the Secretary prevented some eligible farmers from voting in the referendum held to ascertain their approval of the marketing order. This contention is advanced notwithstanding the fact that more than 89% of the voting farmers gave approval to the order and, as the court of appeals observed, "[n]o rejection of even one proffered ballot has been shown" (Pet. App. 23). The reason for petitioners' inability to point to a

[14] 7 U.S.C. 608c(18).

[15] *Id.*

single disenfranchised farmer is that the Secretary fully complied with the injunctions of the Act.

As this Court observed in *H. P. Hood & Sons* v. *United States*, 307 U.S. 588, 598, where this same issue was raised, "[t]he Act does not supply the Secretary with detailed directions as to the manner of holding a referendum. Its language is general. The Secretary 'may conduct a referendum among producers.' What producers? Those 'engaged in the production of [milk] for sale in the marketing area' . . .". In *Hood*, as in this case, the marketing order "pooled" the milk of the regulated milk companies (those doing a fluid milk business in the marketing area) and required only those companies to pay the minimum blend price to the farmers for their milk and to account to the producer settlement fund. In conducting the referendum upheld by this Court in *Hood*, the Secretary determined to be eligible to vote those dairy farmers who, during a representative period, delivered milk to a company which would be subject to the minimum pricing and pooling regulations under the order. This case is on all fours with *Hood*, for that is precisely what the Secretary did here. The pricing and pooling regulations of the marketing order here involved apply only to those milk companies which operate "pool plants" (R. 13). Every farmer who delivered milk to a "pool plant" during the representative period was permitted to vote (R. 191, 193). As previously noted, the result was

1663 in favor of approval of the order and 192 against.

Only the milk of those farmers who deliver to plants regulated under the marketing order is pooled and priced by the order. The milk of farmers not delivering to "pool plants" is neither subject to the minimum price provisions nor counted in the pool. As this Court ruled in *Hood*, the Seventh Circuit in *United States* v. *Wrightwood Dairy Co.*, 127 F. 2d 907, and the court below in this case, it is proper to restrict the referendum to those farmers delivering to regulated plants. See also, *Benson* v. *Schofield*, 236 F. 2d 719, 723 (C.A.D.C.), certiorari denied, 352 U.S. 976.

3. Petitioners' final contention relates to the geographical bounds of the marketing area as drawn by the Secretary. In essence, they urge that there are two distinct milk markets, Baltimore City and the surrounding counties. Only the Baltimore City market, they claim, had a milk surplus, and the Secretary therefore could not extend regulation to the counties.

This argument goes only to the sufficiency of the evidence in the record to support the Secretary's decision on the proper size of the market, as this Court has already found nothing *per se* improper in the inclusion of urban and rural communities in one milk marketing area. *United States* v. *Rock Royal Co-op.*, 307 U.S. 533.[16] As the court of appeals found

[16] In *Rock Royal* the milk market area there approved consisted of New York City and the then rural or suburban counties of Westchester, Nassau and Suffolk in New York State.

(Pet. App. 24–27), there was substantial evidence to support the Secretary's conclusion that the milk surplus problem, extant or incipient, threatened the stability of milk marketing in the entire area included in his marketing order. For the administrative record reflected and the Secretary found, *inter alia:* (1) that the milk companies with plants in Baltimore City sell more fluid milk in the surrounding counties than do companies in Willow Farms' position (R. 8–12); (2) that the milk companies located in Baltimore compete with companies in the surrounding counties for dairy farmers to supply them (R. 6–7); (3) that the prices paid by county companies such as petitioner for their milk were directly related to the prices paid by the Baltimore City companies (R. 4–5); and (4) that the county companies drew on the so-called city surplus when they needed additional milk supplies (R. 165).[17]

Petitioners' reliance upon the existence of a municipal ordinance, purporting to bar petitioner Willow Farms from selling milk in Baltimore City, is misplaced. As the court of appeals noted, "it does not appear that [Willow Farms] ever tried to enter Baltimore or, indeed, wished to do so." (Pet. App. 25). Moreover, the ordinance is of doubtful validity. The municipal ordinance involved is of the type which bars from sale within the city limits milk or milk products not bottled at a plant located inside the city

[17] See pp. 4–5, note 4, *supra*.

limits." In *Dean Milk Co.* v. *Madison*, 340 U.S. 349, this Court struck down such a municipal milk ordinance as unconstitutional. Furthermore, a Maryland court has already held the very Baltimore ordinance in question to be invalid insofar as it applies to sales of ice cream within the city limits. *Supplee-Willis-Jones Milk Co.* v. *Huntington Williams* (Baltimore City Circuit Court, decided July 9, 1956). It was not the force of the municipal ordinance but business competition which kept Willow Farms from Baltimore.

Petitioners' final attack on the configuration of the marketing area is against the producer settlement fund. Willow Farms complains that it has to pay into that fund, while in general only so called "Baltimore" companies and a dairy farmers' co-operative which supplies them draw from it. This, petitioners argue, means that Willow Farms is subsidizing those companies and that, under the order, its farmers unlawfully have to give up their good fluid milk market for the benefit of farmers who supply milk to the "city" handlers. This Court considered and rejected identical contentions in *United States* v. *Rock Royal Co-op., supra*, and *H. P. Hood & Sons* v. *United States*,

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"Art. 12, Sec. 15, Baltimore City Code (1950) provides in pertinent part:

No permit to pasteurize milk, cream, ice cream or other dairy products for sale in Baltimore City shall be granted to any person, firm or corporation whose plant shall be located beyond the corporate limits of Baltimore City.

307 U.S. 588. The Court there pointed out that the milk companies have no financial interest at all in the producer settlement fund, 307 U.S. at 561, and held that equalization pools are properly authorized by the Act. See 307 U.S. at 571–73. The court of appeals so held here.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied. It is further requested that action be taken on the petition at this Term. By order of April 26, 1963, the court of appeals granted petitioners' motion to stay its mandate pending action by this Court on the petition for certiorari (Pet. App. 38–40). As a result, that portion of the established minimum Class I price which the milk marketing order requires Willow Farms and the other regulated milk companies to pay to the producer settlement fund is, instead, being paid into the registry of the district court. This, in turn, has necessitated a significant reduction in the blend price returned to the approximately 2400 dairy farmers whose milk is pooled and priced under this order. If the petition is not acted upon at this Term, these farmers will continue to suffer a substantial loss of income until at least October. Additionally, we have been advised by the Department of Agriculture that it may be necessary to suspend the entire operation of the marketing order, with the likely consequence of severe disruption of milk marketing conditions in

the Upper Chesapeake Bay area. Cf. *United States* v. *Ruzicka*, 329 U.S. 287, 292–294.

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APPENDIX

The Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 *et seq.*, provides in pertinent part as follows:

7 U.S.C. 601

> It is declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.

7 U.S.C. 602

> It is declared to be the policy of Congress—
>
> (1) Through the exercise of the powers conferred upon the Secretary of Agriculture under sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, and 624 of this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish, as the prices to farmers, parity prices as defined by section 1301(a)(1) of this title.

* * * * * *

7 U.S.C. 608a(6)

> The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623 and 624 of this title, in any proceeding now pending or hereafter brought in said courts.

* * * * *

7 U.S.C. 608c(1)

The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, and 624 of this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

7 U.S.C. 608c(2)

Orders issued pursuant to this section shall be applicable only to (A) the following agricultural commodities and the products thereof (except products of naval stores and the products of honeybees), or to any regional or market classification, of any such commodity or product: Milk, * * *.

7 U.S.C. 608c(3)

Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, and 624 of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

7 U.S.C. 608c(4)

After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing, (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, and 624 of this title with respect to such commodity.

7 U.S.C. 608c(5)

In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) *no others*:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payments to all producers and associations of producers delivering milk to the

same handler of uniform prices for all milk delivered by them: *Provided*, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval, or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered; subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection, providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) of this section.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection.

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection, for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of sections 291 and 292 of this title, engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: *Provided*, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection for such milk.

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7 U.S.C. 608c(7)

In the case of the agricultural commodities and the products thereof specified in subsection (2) of this section orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph shall be deemed to be acting in an official capacity, within the meaning of section 610(g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5)–(7) of this section and necessary to effectuate the other provisions of such order.

7 U.S.C. 608c(8)

Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such orders have signed a marketing agreement, entered into pursuant to section 608b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such orders have signed such a marketing agreement: *Provided*, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who during such representative period, have been engaged in the production of such commodity

for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

7 U.S.C. 608c(9)

Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as Cali-

fornia citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, and 624 of this title with respect to such commodity or product, and

(3) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

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"7 U.S.C. 608c(11)(B)

Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional

production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

7 U.S. C. 608c(12)

Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

7 U.S.C. 608c(13)(A)

No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, and 624 of this title shall be applicable to any producer in his capacity as a producer.

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7 U.S.C. 608c(15)(A)

Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for

a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to the subsection shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608a(6) of this title. Any proceedings brought pursuant to section 608a(6a) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection.

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7 U.S.C. 608c(18)

The Secretary of Agriculture prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying

the price fixed in any such term, shall ascertain the parity prices of such commodities. The prices which it is declared to be the policy of Congress to establish in section 602 of this title shall, for the purposes of such agreement, order, or amendment, be adjusted to reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 608b of this title or this section, as the case may be, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.

7 U.S.C. 608c(19)

For the purpose of ascertaining whether the issuance of an order is approved or favored by producers or processors, as required under the applicable provisions of sections 601–604, 607–608a, 608b, 608c, 608d, 608e–1 to 612, 613, 614–619, 620, 623 and 624 of this title, the Secretary may conduct a referendum among producers or processors and in the case of an order other than an amendatory order shall do so. The requirements of approval or favor under any such provision, shall be held to be complied

with if, of the total number of producers or processors, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the precentage required under such provision. The terms and conditions of the proposed order shall be described by the Secretary in the ballot used in the conduct of the referendum. The nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12) of this section.

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7 U.S.C. 1301

(a) For the purposes of this subchapter and the declaration of policy—

(1)(A) The "parity price" for any agricultural commodity, as of any date, shall be determined by multiplying the adjusted base price of such commodity as of such date by the parity index as of such date.

(B) The "adjusted base price" of any agricultural commodity, as of any date, shall be (i) the average of the prices received by farmers for such commodity, at such times as the Secretary may select during each year of the ten-year period ending on the 31st of December last before such date, or during each marketing season beginning in such period if the Secretary determines use of a calendar year basis to be impracticable, divided by (ii) the ratio of the general level of prices received by farmers for agricultural commodities during such period to the general level of prices received by farmers for agricultural commodities during the period January 1910 to December 1914, inclusive. As used in this subparagraph, the term "prices" shall include wartime subsidy payments made to producers under programs de-

signed to maintain maximum prices established under the Emergency Price Control Act of 1942.

(C) The "parity index," as of any date, shall be the ratio of (i) the general level of prices for articles and services that farmers buy, wages paid hired farm labor, interest on farm indebtedness secured by farm real estate, and taxes on farm real estate, for the calendar month ending last before such date to (ii) the general level of such prices, wages, rates, and taxes during the period January 1910 to December 1914, inclusive.

(D) The prices and indices provided for herein, and the data used in computing them, shall be determined by the Secretary, whose determination shall be final.

(E) Notwithstanding the provisions of subparagraph (A) of this paragraph, the transitional parity price for any agricultural commodity, computed as provided in this subparagraph, shall be used as the parity price for such commodity until such date after January 1, 1950, as such transitional parity price may be lower than the parity price, computed as provided in subparagraph (A) of this paragraph, for such commodity. The transitional parity price for any agricultural commodity as of any date shall be—

(i) its parity price determined in the manner used prior to the effective date of the Agricultural Act of 1948, less

(ii) 5 per centum of the parity price so determined multiplied by the number of full calendar years (not counting 1956 in the case of basic agricultural commodities) which, as of such date, have elapsed after January 1, 1949, in the case of non-basic agricultural commodities, and after January 1, 1955, in the case of the basic agricultural commodities.

(F) Notwithstanding the provisions of subparagraphs (A) and (E) of this subsection,

if the parity price for any agricultural commodity, computed as provided in subparagraphs (A) and (E) of this subsection appears to be seriously out of line with the parity prices of other agricultural commodities, the Secretary may, and upon the request of a substantial number of interested producers shall, hold public hearings to determine the proper relationship between the parity price of such commodity and the parity prices of other agricultural commodities. Within sixty days after commencing such hearing the Secretary shall complete such hearing, proclaim his findings as to whether the facts require a revision of the method of computing the parity price of such commodity, and put into effect any revision so found to be required.

(G) Notwithstanding the foregoing provisions of this section, the parity price for any basic agricultural commodity, as of any date during the six-year period beginning January 1, 1950, shall not be less than its parity price computed in the manner used prior to October 31, 1949.

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7 U.S.C. 1301(c)

The latest available statistics of the Federal Government shall be used by the Secretary in making the determinations required to be made by the Secretary under this chapter.

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